

RBS and RUS, USDA

§ 4290.1230

than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form) or other USDA-approved form(s), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form) or other USDA-approved form(s), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s).

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

(a) *RBIC's authorization of the Secretary to guarantee securities.* By submitting a request for a draw against the Leverage commitment, you authorize the Secretary, or the Secretary's designated agent or trustee, to guarantee your Debenture and to sell it with the Secretary's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of \$5,000. The Secretary, in his or her discretion, may determine a minimum dollar amount for draws against Leverage commitments. Any such minimum amounts will be published in Notices in the FEDERAL REGISTER from time to time.

(c) *Effect of regulatory violations on RBIC's eligibility for draws—(1) General rule.* You are eligible to make a draw against your Leverage commitment only if you are in compliance with all applicable provisions of the Act and this part (*i.e.*, no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) The Secretary determines that your outstanding violations are of non-substantive provisions of the Act or this part or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with the Secretary in writing on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (*see* also § 4290.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and this part (*i.e.*, no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the RBIC;

(ii) An officer of a corporate general partner or managing member of the RBIC;

(iii) An individual who is authorized to act as or for a general partner of the RBIC; or

(iv) An individual who is authorized to act as or for a managing member of the RBIC.

(4) A statement that the proceeds are needed to fund one or more particular Enterprises or to provide liquidity for your operations. If required by the Secretary, the statement must include the name and address of each Enterprise, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 confirming the closing of the transaction.

(2) If the Secretary required you to provide information concerning a specific planned Financing under paragraph (d)(4) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must provide a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible

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for additional draws. The Secretary may also determine that you are not in compliance with the terms of your Leverage under § 4290.1810.

EFFECTIVE DATE NOTE: At 76 FR 80224, Dec. 23, 2011, § 4290.1230 was amended by revising paragraphs (d)(1), (d)(2), and (e)(1), effective Jan. 23, 2012. For the convenience of the user, the revised text is set forth as follows:

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

* * * * *

(d) * * *

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 or other USDA-approved form(s) (see also § 4290.1220 for filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 or other USDA-approved form(s) in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form) or other USDA-approved form(s).

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(e) * * *

(1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 or other USDA-approved form(s) confirming the closing of the transaction.

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§ 4290.1240 Funding of RBIC's draw request through sale to third-party.

(a) *RBIC's authorization of the Secretary to arrange sale of Debentures to third-party.* By submitting a request for a draw of Debenture Leverage, you authorize the Secretary, or any agent or trustee the Secretary designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture to a third-party at a price approved by the Secretary; and

(2) The purchase of your Debenture from the third-party and the pooling of your Debenture with other Debentures with the same maturity date.

(b) *Sale of Debentures to a third-party.* If the Secretary arranges for the sale of

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your Debenture to a third-party, the sale price may be an amount discounted from the face amount of the Debenture.

DISTRIBUTIONS BY RBICs WITH OUTSTANDING LEVERAGE

§ 4290.1500 Restrictions on distributions to RBIC investors while RBIC has outstanding Leverage.

(a) *Restriction on distribution.* If you have outstanding Leverage, whenever you make a distribution to your investors you must make, at the same time, a prepayment to or for the benefit of the third-party holder of the Debenture sold pursuant to § 4290.1240 of this part, accrued unpaid interest and the principal, in whole or in part, of one or more of your Debentures outstanding as of the date of the distribution (subject to the terms of such Debentures).

(b) *Amount of prepayment.* You must calculate the amount due the third-party holder by multiplying the total amount you intend to distribute by a fraction whose numerator is the outstanding principal of your Debenture(s) immediately preceding your distribution, and whose denominator is the sum of your Leverageable Capital as of that time plus the outstanding principal amount of your Debentures. For purposes of the preceding sentence “principal” means both the net proceeds and interest accrued to date of a discounted Debenture. The amount of any payment received under this section will be credited first against unpaid interest accrued to the date of distribution and then to the principal in whole or in part of the first Debenture you select to prepay and then to the interest and principal in whole or in part of such other Debenture(s) as you select to prepay. You may elect to prepay in whole any discounted Debenture under this section only within five years of its maturity date. Payments under this section must be made on the next occurring March 1 or September 1.

(c) *Effect of prepayment.* Subject to the terms of the Debenture(s), you may voluntarily prepay additional principal, but neither mandatory nor voluntary prepayment will increase your future Leverage eligibility.